

November 10, 2010

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Notice

WT Docket No. 05-265

WT Docket No. 06-150; PS Docket No. 06-229; RM-11592

Dear Ms. Dortch:

On November 9, 2010, Thomas Sugrue, Kathleen Ham, Neville Ray, Dave Miller, and Steve Sharkey of T-Mobile USA, Inc. (“T-Mobile”) and the undersigned met with Edward Lazarus, chief of staff, and Rick Kaplan, chief counsel and senior legal advisor to Chairman Genachowski regarding the above captioned proceedings. The T-Mobile participants also met with Douglas Sicker, the FCC’s chief technologist, regarding the D Block proceeding.

With respect to data roaming, we reiterated the arguments from our prior filings in this proceeding regarding the consumer and competitive benefits that would accrue from adopting a data roaming rule. We noted that the record in this proceeding is now complete and that the Commission should move forward expeditiously to adopt the rule, consistent with the recommendation in the National Broadband Plan. We also expressed our strong support for the FCC’s legal authority to adopt a data roaming rule. In support of our argument that the increasing consolidation in the wireless marketplace warrants adoption of a roaming rule, we pointed to AT&T’s recent acknowledgement that it “does not have a current desire” to seek 3G roaming from T-Mobile.^{1/} We noted that while roaming has historically been competitive and

^{1/} See Email from Gram Meadors, AT&T, to Dirk Mosa, T-Mobile, attached to Letter from Jeanine Poltronieri, Assistant Vice President, External Affairs, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 3, 2010). While Mr. Meadors attributes this current lack of desire to the fact that T-Mobile’s 3G network does not utilize the same spectrum as AT&T’s 3G handsets, handsets can readily be – and increasingly are – equipped with chipsets that enable the use of multiple 3G bands. See Letter from Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 9, 2010). If AT&T did not have a national footprint made possible by its series of acquisitions, it

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reciprocal, *i.e.*, there were multiple potential roaming partners and a mutual need for roaming, AT&T's letter suggests that roaming is increasingly becoming a monopoly service provided on a unilateral basis.

We also discussed the impact of a data roaming rule on the goals of encouraging investment and jobs. Contrary to arguments made by opponents of such a rule, we explained that such a rule would promote these goals. By ensuring the availability of data roaming on just, reasonable, and non-discriminatory terms, a roaming rule will enable T-Mobile to invest in new facilities in smaller markets that would not be economical to build out unless T-Mobile could use roaming to serve the adjacent more sparsely populated areas. The availability of data roaming will also promote additional investment in T-Mobile's existing footprint, to meet the increased demands of a larger subscriber base that it could attract by virtue of being able to provide service in areas where it has not yet built out. In both of these instances, the increased investment will create jobs related to the construction and operation of the new facilities. As new customers come online, moreover, still more jobs will be created. For example, T-Mobile has found that the ability to roam has enabled the company to locate call centers in more remote locations and build a facilities-based footprint over time as its customer base grows. The enhanced productivity that wireless users will realize from the competitive choice from among multiple providers of mobile high speed broadband will also benefit the economy.

We also pointed out that, by improving the coverage of a requesting carrier, a data roaming rule would help the requesting carrier reduce subscriber churn and improve revenues, which could be used for increased investments and job creation. Finally, we noted that opponents of data roaming had also opposed similar rules – including the cellular headstart doctrine and the voice roaming rule – on similar grounds, but the evidence is clear that these rules have had no adverse effect on investments in wireless networks.

With respect to the D Block, we expressed our strong support for a commercial auction as required by the Communications Act and endorsed by the National Broadband Plan, and urged the Commission to adopt a Notice or Proposed Rulemaking. We noted that the Commission itself, in the recent *Wireless Competition Report*, recognized the unique value of spectrum below 1 gigahertz and the fact that it was predominantly held by the two largest wireless carriers.^{2/} We also explained that a commercial auction would help further public safety goals by ensuring a rapid, privately-financed buildout of a state-of-the-art D Block network that could then be made available to public safety entities through public-private partnerships, also as contemplated in the National Broadband Plan.

presumably would have the incentive to equip its phones with such chipsets to obtain roaming in areas where it lacked its own network.

^{2/} See, e.g., *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81, at ¶¶ 4, 275 (rel. May 20, 2010).

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Pursuant to section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed electronically with the Office of the Secretary for inclusion in the above-referenced dockets and served electronically on the Commission participants in the meeting.

Please direct any questions regarding this filing to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard J. Symons", with a long horizontal flourish extending to the right.

Howard J. Symons

cc: Edward Lazarus
Rick Kaplan
Douglas Sicker